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MALAYSIAN OXYGEN BHD v. SOH TONG WAH & ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
ABDUL WAHAB PATAIL JCA
BALIA YUSOF WAHI JCA
B MOHAMAD ARIFF YUSOF JCA
[CIVIL APPEALS NO: W-02-3593-2010 & W-02-3646-2010]
4 NOVEMBER 2014

C ***ADMINISTRATIVE LAW:*** *Judicial remedies – Judicial review – Whether High Court conducted thorough scrutiny of findings of fact and reasoning by Industrial Court – Test for intervention – Whether there was abuse of power or unfair treatment by Industrial Court – Whether disagreement with reasoning of Industrial Court could form basis for judicial review*

D The appeal herein was from a dismissal by the High Court of the appellant's application for judicial review against the decision of the Industrial Court. The matter before the Industrial Court arose out of a representation by the respondent under s. 20 of the Industrial Relations Act 1967, alleging dismissal without just cause or excuse. The Industrial Court ruled that the dismissal of the respondent was without just cause and excuse and awarded
E compensation in lieu of reinstatement and backwages to the respondent. The question in this appeal was whether the High Court had erred in dismissing the appellant's application for judicial review of the award by the Industrial Court.

F **Held (dismissing appeals with no order as to costs)**
Per Abdul Wahab Patail JCA delivering the judgment of the court:

(1) The High Court cannot, in *certiorari* proceedings, entertain what is effectively an appeal against the findings of fact. Scrutiny for substance involves examination of findings of fact. The extent to which the court
G can review findings of fact of a tribunal has the same practical limitations as in an appeal from a trial court. The test for intervention in judicial review proceedings is whether there was abuse of power or unfair treatment by the Industrial Court for example, illegality, procedural impropriety, unreasonableness or possibly proportionality. (paras 23, 24 & 25)

H

(2) The grounds of judgment of the High Court and the record of appeal by the appellant demonstrated that the High Court had addressed the law at some length to guide it and conducted a thorough scrutiny of the findings of fact and the reasoning by the Industrial Court in arriving at
I its award, before dismissing the appellant's application for judicial review. There was nothing in the nature of illegality, irrationality or procedural impropriety in the assessment of the appellant's case by the Industrial Court. (para 26)

(3) The appellant's case in its application for judicial review and in this appeal was that it disagrees with the Industrial Court that the breach was insufficient to justify dismissal. Disagreement is not basis for judicial review. Therefore, the High Court did not err in dismissing the application for judicial review. (paras 26 & 27)

Bahasa Malaysia *Translation Of Headnotes*

Rayuan ini adalah daripada penolakan permohonan perayu oleh Mahkamah Tinggi untuk semakan kehakiman terhadap keputusan Mahkamah Perusahaan. Perkara di hadapan Mahkamah Perusahaan berbangkit daripada rujukan oleh responden di bawah s. 20 Akta Perhubungan Perusahaan 1967, mendakwa penamatan tanpa sebab dan alasan adil. Mahkamah Perusahaan memutuskan bahawa penamatan responden adalah tanpa sebab dan alasan adil dan mengawardkan pampasan sebagai ganti pengambilan semula dan gaji kebelakangan kepada responden. Persoalan dalam rayuan ini adalah sama ada Mahkamah Tinggi telah khilaf dalam menolak permohonan perayu bagi semakan kehakiman award yang diberikan oleh Mahkamah Perusahaan.

Diputuskan (menolak rayuan-rayuan tanpa perintah untuk kos)
Oleh Abdul Wahab Patail HMR menyampaikan penghakiman mahkamah:

(1) Mahkamah Tinggi tidak boleh, dalam prosiding *certiorari*, mempertimbangkan apa yang sememangnya suatu rayuan terhadap dapatan fakta. Penilaian intipati melibatkan pemeriksaan dapatan fakta tersebut. Terdapat had yang praktikal, bagi setakat mana mahkamah boleh menyemak dapatan fakta sesuatu tribunal, seperti rayuan daripada mahkamah bicara. Ujian untuk campur tangan dalam prosiding semakan kehakiman adalah sama ada terdapat penyalahgunaan kuasa atau ketidakadilan oleh Mahkamah Perusahaan seperti kepenyalahan undang-undang, ketidakwajaran prosedur, ketidakmunasabahan atau kemungkinan perkadaran.

(2) Alasan-alasan penghakiman Mahkamah Tinggi dan rekod rayuan oleh perayu menunjukkan bahawa Mahkamah Tinggi telah mempertimbangkan undang-undang dengan panjang lebar sebagai panduan dan menjalankan penilaian terperinci terhadap dapatan fakta dan alasan-alasan Mahkamah Perusahaan dalam mencapai awardnya, sebelum menolak permohonan perayu untuk semakan kehakiman. Tidak ada apa-apa yang berbentuk kepenyalahan undang-undang, keadaan tidak rasional atau ketidakwajaran prosedur dalam penilaian kes perayu oleh Mahkamah Perusahaan.

(3) Kes perayu dalam permohonannya untuk semakan kehakiman dan rayuan ini adalah bahawa ia tidak bersetuju dengan Mahkamah Perusahaan bahawa pelanggaran tersebut tidak mencukupi untuk mewajarkan penamatan. Tidak bersetuju bukanlah satu asas untuk semakan kehakiman. Oleh itu, Mahkamah Tinggi tidak khilaf dalam menolak permohonan untuk semakan kehakiman.

Case(s) referred to:

Associated Provincial Picture Houses Ltd v. Wednesbury Corporation [1948] 1 KB 223 ***(refd)***

Council of Civil Service Unions v. Minister for the Civil Service [1983] UKHL 6 ***(refd)***

Ellis v. Dubowski [1921] 3 Kings Bench 621 ***(refd)***

Kerajaan Malaysia & Ors v. Nasharuddin Nasir [2004] 1 CLJ 81 FC ***(refd)***

Pihak Berkuasa Negeri Sabah v. Sugumar Balakrishnan & Another Appeal [2002] 4 CLJ 105 FC ***(refd)***

R Rama Chandran v. Industrial Court of Malaysia & Anor [1997] 1 CLJ 147 FC ***(refd)***

R v. Burnley Justices 85 Law Journal Reports, King's Bench 1565 ***(refd)***

Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd [2010] 8 CLJ 629 FC ***(refd)***

Soh Tong Hwa v. Malaysian Oxygen Berhad [2008] 2 LNS 469 ***(refd)***

Wheeler v. Leicester City Council [1985] UKHL 6 ***(refd)***

William Jacks & Co (M) Sdn Bhd v. S Balasingam [1997] 3 CLJ 235 CA ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, s. 72

Industrial Relations Act 1967, s. 20(2), (3), (4)

(Civil Appeal No: W-02-3593-2010)

For the appellant - N Sivabalah (E Reena with him); M/s Shearn Delamore & Co

For the respondent - VK Raj (S Devi with him); M/s P Kuppusamy & Co

(Civil Appeal No: W-02-3646-2010)

For the appellant - VK Raj (S Devi with him); M/s P Kuppusamy & Co

For the respondent - N Sivabalah (E Reena with him); M/s Shearn Delamore & Co

[Editor's note: For the High Court judgment, please see Malaysian Oxygen Berhad v. Soh Tong Wah & Anor [2011] 1 LNS 790.]

Reported by S Barathi

JUDGMENT

Abdul Wahab Patail JCA:

[1] Civil Appeal W-02-3593-2010 is the appeal by Malaysian Oxygen Bhd (the appellant) against the decision dismissing its application R2-26-131-2008 before the High Court for judicial review of the award by the High Court. It was heard together with an appeal W-02-3646-2010 to this court by the respondent herein Soh Tong Wah (the respondent) against the decision of the High Court in respect of his application R2-25-135-2008 for judicial review, on quantum and other orders that were dismissed by the Industrial Court.

[2] The appeals were heard together on 3 October 2012, at the end of which both appeals were dismissed with no order as to costs.

[3] We address Civil Appeal W-02-3593-2010, and Malaysian Oxygen Bhd, the appellant therein as "the appellant" and Soh Tong Wah, the respondent therein as "the respondent" in both appeals W-02-3593-2010 and W-02-3646-2010.

Background

[4] The appellant had undertaken investigations into allegations of misconduct made against the respondent, the general manager of the appellant's process gas solutions division where the respondent was responsible for the management of all the activities within that division.

[5] Its investigations revealed links between the respondent and two of the appellant's suppliers, Kelington Engineering Sdn Bhd and Just Brilliant Sdn Bhd, which had been awarded substantial contracts by the appellant for purchases.

[6] The respondent was issued with a letter dated 26 May 2003 instructing him to show cause in writing why disciplinary action, including determination of his employment, should not be taken against him in respect of the eight charges levelled therein.

[7] The charges against the respondent were:

(a) Charge 1

> That you, as General Manager - PGS, a senior member of the top management team, have without the knowledge of or declaration to the Company, formed a company called Empire Gallery Sdn Bhd with your wife, Mdm Kong Foong Ming, which act is in conflict with the expressed requirements that you have to devote your whole time and attention to the service of the Company and not (without the company's written consent) to engage or become interested in any other gainful trade or business.

(b) Charge 2

> That you, as General Manager - PGS, a senior member of the top management team, with duties and responsibilities including procurement and award of tenders, contracts or purchases, have failed to inform or declare to the Company that your wife, Mdm Kong Foong Ming is a cheque signatory for Corporate Commander Sdn Bhd which holds a 40% share-holding in Kelington Engineering Sdn Bhd, a supplier and engineering contractor to our Company that was awarded substantial contracts in the years 2001 and 2002 by our Company, which act tantamount to a breach of your fiduciary duty to the Company and a conflict of interest.

(c) Charge 3

> That you, as General Manager - PGS, a senior member of the top management team, with duties and responsibilities including procurement and award of tenders, contracts or purchases, have failed to inform or declare to the Company that Wong Kong Meng, the company secretary to your company Empire Gallery Sdn Bhd is a shareholder, director and company secretary of Proline Management Services Sdn Bhd and Proline Tax Management Sdn Bhd which your Company uses their services, is also a shareholder (directly or indirectly), director and company secretary of Kelington

Engineering Sdn. Bhd. that was awarded substantial contracts in the years 2001 and 2002 by our Company, which act tantamount to a breach of your fiduciary duty to the Company and a conflict of interests.

(d) Charge 4

That you, as General Manager - PGS, a senior member of the top management team, with duties and responsibilities including procurement and award of tenders, contracts or purchases, have failed to inform or declare to the Company that Wong Kong Meng, the company secretary to your company, Empire Gallery Sdn Bhd is a shareholder, director and company secretary of Corporate Commander Sdn Bhd and Palace Star Sdn Bhd which are shareholders of Kelington Engineering Sdn Bhd, that was awarded substantial contracts in the years 2001 and 2002 by our Company, which act tantamount to a breach of your fiduciary duty to the Company and a conflict of interests.

(e) Charge 5

That you, as General Manager - PGS, a senior member of the top management team, with duties and responsibilities including procurement and award of tenders, contracts or purchases, have failed to inform or declare to the Company that Wong Kong Meng, the company secretary to your company, Empire Gallery Sdn Bhd is the company secretary of RG Enterprise, which is a shareholder of Kelington Engineering Sdn Bhd, that was awarded substantial contracts in the years 2001 and 2002 by our Company, which act tantamount to a breach of your fiduciary duty to the Company and a conflict of interests.

(f) Charge 6

That you, as General Manager - PGS, a senior member of the top management team, with duties and responsibilities including procurement and award of tenders, contracts or purchases, have failed to inform or declare to the Company that Wong Kong Meng, the company secretary to your company Empire Gallery Sdn Bhd is the company secretary of Just Brilliant Sdn Bhd, that was awarded substantial purchases in the years 2001 and 2002 by our Company, which act tantamount to a breach of your fiduciary duty to the company and a conflict of interests.

(g) Charge 7

That you, as General Manager - PGS, a senior member of the top management team, with duties and responsibilities including procurement and award of tenders, contracts or purchases, have failed to inform or declare to the Company that your cousin, Sow Chin Tiam, was employed by a supplier to our company, Just Brilliant Sdn Bhd, in February 1999 and currently is its manager, which company became a supplier to our Company in June 1999 and was awarded substantial purchases in the years 2001 and 2002 by our Company, which act tantamount to a breach of your fiduciary duty to the Company and a conflict of interests.

(h) Charge 8

That you, as General Manager - PGS, a senior member of the top management team, with duties and responsibilities including procurement and award of tenders, contracts or purchases, have failed to inform or declare to the Company that your brother, Soh Chin Leh, has joined the employment of a supplier to our Company, Just Brilliant Sdn Bhd, in January 2003 that was awarded substantial purchases in the years 2001 and 2002 by our Company, which act tantamount to a breach of your fiduciary duty to the Company and a conflict of interests.

[8] The appellant sought judicial review for:

(a) An order of *certiorari* to quash the entire decision of the Industrial Court in its *Soh Tong Hwa v. Malaysian Oxygen Berhad* [2008] 2 LNS 469 (Award No. 469 of 2008) dated 17 March 2008 which was received on 25 April 2008;

(b) Any other relief that the High Court deems fit and appropriate; and

(c) Costs.

[9] It is the appellant's case that:

(a) By his letter 29 May 2003, the respondent did not dispute most of the charges but instead gave his explanation and justification for his conduct.

(b) Notwithstanding the respondent's explanation, the appellant felt it could no longer repose trust and confidence in the respondent, and issued the letter dated 6 June 2003 dismissing the respondent with immediate effect.

(c) The respondent made representations under s. 20 of the Industrial Relations Act, 1967 to the Minister of Human Resources who referred the representations to the Industrial Court for a decision.

(d) In its Award No. 469/2008, the Industrial Court ruled the dismissal of the respondent to be without just cause and excuse and awarded the respondent with compensation *in lieu* of reinstatement and backwages totalling RM1,290,300.

(e) The Industrial Court found that the respondent's dismissal from service on 6 June 2003 was too harsh in the circumstances and awarded the respondent backwages and compensation RM1,290,300. See Award No. 469 of 2008 dated 17 March 2008 ("the award").

[10] The High Court dismissed the appellant's application. The appellant appealed to this court.

[11] The question before this court is whether the High Court erred in dismissing the respective appellant's application for judicial review of the award by the Industrial Court. The grounds for the application to the High

Court and the appeal to this court is two-pronged, that (a) there was error in the evaluation of the evidence; and (b) the award was not proportionate to the wrongs committed by the respondent.

[12] The submissions before the court dwelt on the issues relating to (a) re-evaluation of the findings of fact by the Industrial Court; and (b) whether punishment of dismissal was harsh.

[13] The appeal before this court is an appeal from a dismissal by the High Court of the appellant's application for judicial review of the decision of the Industrial Court. The matter before the Industrial Court arose out of a representation by the respondent under s. 20 of the Industrial Relations Act 1967 (Act 177), alleging dismissal without just cause or excuse. The matter was referred to the Industrial Court by the Minister exercising his discretion to do so under s. 20(3) upon receiving the notification by the Director General under s. 20(2) that he is satisfied that there was no likelihood of the matter being settled. The Industrial Court is not only a tribunal with specific jurisdiction under Act 177 but it is also provided by s. 20(4) that where an award is made by the Industrial Tribunal, the award shall operate as a bar to any action for damages by the workman in any court in respect of wrongful dismissal. Its award is clearly intended by law to be final. It is a tribunal with authority placed upon it in the specific context of claims of dismissal without just cause or excuse. The Industrial Court falls within the mould of the classic tribunal and its judgment in industrial labour matters as to whether there was just cause or excuse is, therefore, not to be lightly disturbed.

[14] In *Associated Provincial Picture Houses Ltd v. Wednesbury Corporation* [1948] 1 KB 223, it was held by Lord Greene MR that the court may intervene in judicial review only if the court could conclude that:

(i) in making its decision, the tribunal took into account factors that ought not to have been taken into account, or

(ii) the tribunal failed to take into account factors that ought to have been taken into account, or

(iii) its decision was so unreasonable that no reasonable authority would ever consider imposing it.

[15] Further down in his judgment, on the question of unreasonableness in judicial review, Lord Greene MR discussed *R v. Burnley Justices* 85 Law Journal Reports, King's Bench 1565, and *Ellis v. Dubowski* [1921] 3 Kings Bench 621 and held:

> That is no authority whatsoever to support the proposition that the court has power, a sort of overriding power, to decide what is reasonable and what is unreasonable. The court has nothing of the kind.

[16] This standard of unreasonableness was explained in *Associated Provincial Picture Houses Ltd v. Wednesbury Corporation (supra)* as follows:

> It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably." Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington LJ in *Short v. Poole Corporation* [1926] Ch 66 at pages 90 and 91 gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another.

[17] Thus, a decision is *Wednesbury* unreasonable if it is so unreasonable that no reasonable person acting reasonably could have made it. It is a stricter test than merely showing the decision was unreasonable. It must be so unreasonable that it can be described as irrational. In *Council of Civil Service Unions v. Minister for the Civil Service* [1983] UKHL 6; [1985] AC 374 HL, Lord Diplock explained that "irrationality" may be referred to as "*Wednesbury* unreasonableness":

> It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. ...

[18] The above explains the standard of unreasonableness that is to be applied.

[19] Reviewing established cases on judicial review, Lord Diplock, in *Council of Civil Service Unions v. Minister for the Civil Service (supra)*, had categorised the recognised grounds as illegality, irrationality and procedural impropriety, and possibly proportionality. In *Wheeler v. Leicester City Council* [1985] UKHL 6; [1985] AC 1054, Lord Roskill, who had sat with Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service (supra)*, held that these three categories of judicial review is neither exhaustive nor mutually exclusive:

> My Lords, the House recently had to consider problems of this nature in *Council of Civil Service Unions v. Minister for the Civil Service* [1984] 3 WLR 1174. In his speech at p. 1196 of the report, my noble and learned friend

> Lord Diplock classified three already well established heads or sets of circumstances in which the court will interfere. First, illegality, second, irrationality and third, procedural impropriety. If I may be forgiven for referring to my own speech in the case, a similar analysis appears on p. 1200 of the report. Those three heads are not exhaustive, and as Lord Diplock pointed out, further grounds may hereafter require to be added. Nor are they necessarily mutually exclusive.
>
> To my mind the crucial question is whether the conduct of the council in trying by their four questions, whether taken individually or collectively, to force acceptance by the club of their own policy (however proper that policy may be) on their own terms, as for example, by forcing them to lend their considerable prestige to a public condemnation of the tour, can be said either to be so "unreasonable" as to give rise to "*Wednesbury* unreasonableness" (*Associated Provincial Picture Houses Ltd, v. Wednesbury Corporation* [1948] 1 KB 223) or to be so fundamental a breach of the duty to act fairly which rests upon every local authority in matters of this kind and thus justify interference by the courts.

[20] In *Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd* [2010] 8 CLJ 629 FC, where the Federal Court followed its decision in *R Rama Chandran v. Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147, held at para. 15 of its judgment reproduced below that the distinction between review and appeal no longer holds:

> [15] We find that there is merit on the submission advanced by the learned counsel for the respondent. Historically, judicial review was only concerned with the decision making process where the impugned decision is flawed on the ground of procedural impropriety. However, over the years, our courts have made inroad into this field of administrative law. *Rama Chandran* is the mother of all those cases. The Federal Court in a landmark decision has held that the decision of inferior tribunal may be reviewed on the grounds of "illegality", "irrationality" and possibly "proportionality" which permits the courts to scrutinise the decision not only for process but also for substance. It allowed the courts to go into the merit of the matter. Thus, the distinction between review and appeal no longer holds.

[21] The statement was made in the context of the unfolding of the nature of judicial review over time through case law where judicial review is no longer confined to flawed process, and the further grounds identified required scrutiny of the decision not only for process but also for substance. Scrutiny for substance was recognised in *Pihak Berkuasa Negeri Sabah v. Sugumar Balakrishnan & Another Appeal* [2002] 4 CLJ 105 FC, (followed by the Federal Court in *Kerajaan Malaysia & Ors v. Nasharuddin Nasir* [2004] 1 CLJ 81 FC), Mohamed Dzaiddin FCJ (as he then was) in the Federal Court said that the statement often made that judicial review is concerned not with the decision but the decision making process, at full face value, may well convey the impression that the jurisdiction of the courts in judicial review proceedings is confined to cases where the aggrieved party has not received fair treatment

by the authority to which he has been subjected, but in practice, the three grounds set out by Lord Diplock permits the courts to scrutinise such decisions not only for process, but also for substance.

[22] Thus, *Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd (supra)* cannot be read as having eliminated distinction between judicial review and an appeal entirely.

[23] We observe that given that judicial review arises from the supervisory jurisdiction, where the primary orders are *certiorari* or *mandamus*, and not from the appellate jurisdiction where the appellate court is cloaked with the jurisdiction of the court appealed from, the High Court cannot in *certiorari* proceedings entertain in judicial review what is effectively an appeal against findings of fact (see *William Jacks & Co (M) Sdn Bhd v. S Balasingam* [1997] 3 CLJ 235).

[24] Scrutiny for substance involves examination of findings of fact. The extent to which the court can review findings of fact of a tribunal has the same practical limitations as in an appeal from a trial court:

(a) A primary finding (eg, unfair dismissal) at the end of a case is drawn from other secondary facts (eg, the various acts of unfairness) which if disputed it itself the subject of a finding of fact drawn from admissible evidence (eg, documents, witnesses etc.) produced and admitted into evidence before the tribunal.

(b) The High Court in judicial review is in no position to re-assess a finding of fact that is an assessment of credibility, including relative credibility of witnesses seen and heard giving testimony and tested on that testimony before the tribunal. See *Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd (supra)*.

(c) But unless the reasoning in the award demonstrates that the finding is made upon an assessment of credibility, with the reasoning not only asserting it was so made but also setting out the observations, for example the conduct of the witness in the way he behaves, answers questions or a particular question in examination-in-chief or in cross-examination, then the High Court can treat that testimony as any other evidence and give it the weight it deserves.

[25] A finding on a secondary fact involves a conclusion drawn from the evidence. A finding of a primary fact involves a conclusion drawn from other facts. Likewise the decision at the end of a case is a conclusion drawn from the application of law to the facts. Conclusions themselves are drawn by a process of reasoning. This is no different in judicial review as from an appeal. The test applied however differs. In an appeal, the test is for intervention is governed by s. 72 of the Courts of Judicature Act 1964 (Act 91), that no judgment or order of the High Court, or of any judge, shall be reversed or substantially varied on appeal, nor a new trial ordered by the Court of

Appeal, on account of any error, defect, or irregularity, whether in the decision or otherwise not affecting the merits or the jurisdiction of the court. Whereas in judicial review, it is whether there was abuse of the power or unfair treatment by the Industrial Court for example illegality, procedural impropriety, unreasonableness or possibly proportionality.

[26] The grounds of judgment of the High Court and the record of appeal by the appellant before this court, demonstrate that the High Court addressed the law at some length to guide it and conducted a thorough scrutiny of the findings of fact and the reasoning by the Industrial Court in arriving at its award, before making its own decision to dismiss the appellant's application for judicial review. The Industrial Court is set up for the purposes of Act 177, an Act to promote and maintain industrial harmony and to provide for the regulation of the relations between employers and workmen and their trade unions and the prevention and settlement of any differences or disputes arising from their relationship and generally to deal with trade disputes and matters arising therefrom. This court finds nothing in the nature of illegality, irrationality or procedural impropriety in the assessment of the appellant's case by the Industrial Court. Summed up in one sentence, the appellant's case in its application for judicial review and in this appeal is that it disagrees with the Industrial Court that the breach was insufficient to justify dismissal. Disagreement is no basis for judicial review.

[27] We found, therefore, that the High Court did not err in dismissing the application for judicial review.

[28] For the same reasons, we dismissed the Appeal W-02-3646-2010 by the respondent.

[29] For the reason that appeals by both parties were dismissed, we made no order as to costs.